

# International Terms of Business of mycon GmbH

## 1. Scope of Application

- 1.1 The following International Terms of Business shall apply exclusively to Customers whose relevant subsidiary is not in Germany. The "Allgemeinen Geschäftsbedingungen" of mycon GmbH shall be binding for Customers domiciled in Germany only.  
These Terms shall apply to contracts which have as their predominant object the supply of goods to the Customer. Any additional obligations assumed or services rendered by us shall not affect the validity of these International Terms of Business.
- 1.2 The International Terms of Business shall by means of framework Agreement also apply to all future contracts concluded with the customer, whose preponderant object is the supply of products or of related spare parts.
- 1.3 Any conflicting or deviating terms and conditions of business of the Customer shall not obligate us in any way, even if we do not expressly contradict them or render services or deliveries without reservation. Likewise, we shall not be obligated insofar as any terms and conditions of business of the customer deviate from statutory provisions, regardless of the content of these International Terms of Business

## 2. Conclusion of Contract

- 2.1 Orders have to be placed in writing by the Customer. Should the order of the Customer deviate from our tentative offer, the Customer shall make clear reference to any such discrepancy.
- 2.2 All orders shall require our written confirmation in order to become valid. The actual delivery of the ordered goods, any behaviour on our part or our silence shall not entitle the Customer to assume the conclusion of a contract. We may confirm the Customer's order in writing within 14 days on receipt thereof. Up to this point the Customer shall be bound to the order and shall not be entitled to revoke the order.
- 2.3 Our written order confirmation shall be decisive for the entire contents of the contract and shall result in the conclusion of a contract even if it deviates from the statements of the Customer with the exception of the purchase price and delivery quantity. This shall also apply to the inclusion of these International Terms of Business. Therefore, any special demands of the Customer, in particular assurances or guarantees with regard to the nature of the goods or the execution of the contract shall require express our confirmation in writing.
- 2.4 The contract shall only fail to come into effect regardless of the extent of the discrepancies if the Customer objects to such discrepancies in writing within 7 days on receipt of the order confirmation.

## 3. Quality of the Goods

- 3.1 We shall be obligated to deliver the items stated in detail in the order confirmation. We shall assume no liability whatsoever as to whether the delivered goods comply with the legal requirements, in particular any safety regulations under public law at the domicile of the Customer or the place of operation. The Customer's attention shall be drawn to his obligation to examine and ensure the usability of the delivered goods in accordance with applicable local law.
- 3.2 In particular, the Customer shall be obligated to ensure that hazardous goods regulations, waste legislation, rules and regulations applicable at the place of operation as well as identification regulations at the place of destination are duly observed. We shall under no circumstances accept any liability in this respect.
- 3.3 We shall not be obligated to carry out deliveries or render services not stated in the written order confirmation or in these International Terms of Business. We are, in particular, not obligated to supply any accessories.
- 3.4 Third parties not involved in the conclusion of this contract – in particular any customers of the Customer – shall not be entitled to demand delivery or to assert any other contractual claims

against us. The Customer shall retain the sole right of receipt and responsibility even if he assigns any claims to third parties.

- 3.5 We shall be entitled to effect delivery in accordance with standard commercial practice taking into consideration customary tolerances with regard to the nature, quantity, quality and packaging. Insignificant changes of measurements, structure and colour are reserved as far as this is reasonable for the Customer.

Partial deliveries can be effected and accounted for separately insofar as this is acceptable to the Customer.

- 3.6 Delivery shall be effected ex works Bielefeld (Incoterms 2010).

#### **4. Terms of Delivery**

- 4.1 We may withhold delivery until due payments have been made (or: as the case may be, a letter of credit has been opened) by the Customer in accordance with the contract and all other obligations owed by the Customer under the contract that are necessary for the performance of the delivery of the goods have been discharged.

- 4.2 We shall be entitled to deliver prior to the agreed date.

- 4.3 Deliveries after the intended date shall be permitted if we inform the Customer of any such delay in delivery and state the period during we will perform our contractual duties. The Customer shall be entitled to object to the subsequent performance within a reasonable period should he consider this subsequent performance unacceptable. The objection shall only be valid if we receive any such objection prior to commencing the subsequent performance. Insofar as we are responsible for the delay in delivery we shall reimburse necessary and attested additional expenses incurred by the customer as a result of delay.

- 4.4 In case of a delay in delivery or any other performance owed by us under the contract, we shall only be liable for damages if the delay was caused negligently or intentionally. Liability for all damages shall in this case be limited to an amount of 0,5 per cent of the contract price of the goods (net) for each full week of delay up to a maximum amount of 5 per cent of the net contract price in the aggregate. Any claim for damages shall also be limited to this maximum amount if the Customer declares the avoidance of the contract due to the delay. Any further liability pursuant to para. 9 shall not be affected by this.

- 4.5 The agreed time of delivery shall not be of the essence. Accordingly and subject to any further prerequisites of the applicable law governing this contract, the Customer shall solely be entitled to declare the contract avoided by reason of any delay if the delay is attributable to us, the Customer has threatened us with the avoidance in writing after the agreed date of delivery and if an additional period of grace of at least two weeks, has not resulted in the delivery of the goods.

- 4.6 If delivery is delayed at the Customer's request or otherwise for reasons attributable to the Customer by more than two weeks after notice was given of the readiness for dispatch, we may charge the Purchaser liquidated storage costs for each commenced month thereafter amounting to 0,5 per cent of the net contract price of the goods up to a maximum of 5 per cent of the contract price (net). We remain entitled to claim further proven general damages in excess of the liquidated amount. Other rights and remedies provided by the contract or the applicable law, in particular to declare the contract avoided, shall remain unaffected.

#### **5. Payment**

- 5.1 The price set out in our written order confirmation shall apply. The same shall apply to the due date for payment. Our prices are exclusive of value added tax. The Customer shall add our request provided us with the necessary documentation required by the competent tax authorities as evidence for an export tax exemption. He shall reimburse us for any value added tax levied on us in Germany or the country of destination due to either the agreed terms of delivery, any

failure to duly provide the requested documentation referred to above or any other circumstances attributable to the Customer.

- 5.2 Any taxes, fees, duties and other charges which are levied on us in connection with the performance of the contract in the country of destination of the goods shall be borne by the Customer. The Customer agrees to pay or reimburse us for any such taxes, fees etc. which we are required to pay.
- 5.3 Save an agreement to the contrary all payments shall be made into the bank account specified in our order confirmation without any reservation or deduction. All bank charges and fees have to be borne by the Customer.
- 5.4 If we do not receive payment from the Customer when such payment has become due, we are entitled to charge an interest of an annual rate of 8 (eight) per centage points above the rate for main refinancing operations of the European Central Bank as applicable throughout the period of delay. This shall apply accordingly if a letter of credit is not opened in time. Any further rights and remedies under the applicable governing law shall remain unaffected.
- 5.5 The Customer may only set off claims in accordance with the governing law of the contract that are owed in the same currency as the main claim and that are either undisputed between the parties or have become res judicata. This shall apply mutatis mutandis to any right of retention of the Customer.

## **6. Quality Defects**

- 6.1 The goods shall be deemed to be non-conforming if the Customer can prove, taking into consideration the agreed quality of the goods (cf. our written order confirmation) at the point of passing of risk, that they differ considerably with regard to packaging, quantity, quality or type from the requirements stated in the written order confirmation or if they are not suitable for the generally intended use in Germany due to the lack of agreements. Any legal exclusions or restrictions of our responsibility shall remain unaffected.  
The goods shall be deemed to conform with the agreed quality if the legal requirements applicable at the place of business of the Customer or the place of operation do not impede the usual use of the goods. Any further individually agreed characteristics of quality of the goods shall remain unaffected.
- 6.2 We shall not be liable for any non-conformity occurring after the passing of risk. Should the Customer attempt to remedy any non-conformity himself or by a third party without our consent, we shall be released from the obligation to provide warranty. In particular, we are not responsible in respect of any defect due to failed use, maintenance or modifications of the goods, use of unsuitable spare parts, defective installation or erection by the Customer or any third party not acting on our behalf, natural wear and tear or damage or any other external influences attributable to us.
- 6.3 The Customer shall be obligated to examine the goods in accordance with legal provisions and check each consignment with regard to identifiable or typical lack of conformity of goods.
- 6.4 In case of delivery of non-conforming products we shall at our option either repair any defect or replace any products or any part thereof that are non-conforming. The Customer has to give us adequate time and opportunity to remedy the defect. For this purpose, the Customer shall grant us access to the products. Additional costs incurred by us due to any relocation of the goods to a place other than the original place of destination shall be borne by the Customer.
- 6.5 The Customer shall have the right to a reduction of the contract price once either two attempts to make good the defect have failed or if we have not undertaken such remedial measures within a reasonable time after receipt of a notice from the Customer, indicating the defect and lapse of an additional final respite set by the Customer. Subject to para. 9. The same shall apply for any claim for damages in lieu of performance. If the quality defect amounts to a fundamental breach of contract, the Customer is in this event alternatively entitled to declare the contract avoided subject to any further preconditions and restrictions set forth by the applicable law.

- 6.6 Any and all remedies of the Customer for any quality defect are conditional upon prompt notice to be given by the Customer no later than seven (7) calendar days after the Customer has discovered or ought to have discovered the defect in accordance with his duty to examine the goods. The Customer shall examine the goods after taking delivery within as short a period as its practicable in the circumstances. The period of time for the examination of the goods shall in any event not exceed a period of fourteen (14) days commencing upon the handover of the goods. The Customer shall not be entitled to rely on any excuse for his failure to give the required notice. We are not entitled to rely on this if the lack of conformity relates to facts that we have or ought to have been aware of at the time of handover of the goods and which we did not disclose to the Customer.

## **7. Defects of title**

- 7.1 The goods shall only have a deficiency in title if they are not free from enforceable rights of third parties that exist already at the time of transfer of risk. Such rights shall only be deemed to constitute defects of title to the extent that
- a. the intellectual property right is registered in the country of use specified in the contract and such right is based on identical invention disclosed and claimed in a property right registered and made public in Germany and
  - b. the ordinary use of the goods as foreseen in the contract by the Customer is hereby impeded.
- 7.2 If due to such circumstances the Customer's regular use of the products is excluded, we may at our discretion and cost either
- procure for the Customer the right to use the goods or
  - provide the Customer with a non-infringing replacement product or modify the goods so that they become non-infringing provided the replacement product / modified product meets substantially the same functional specifications as the product or
  - refund the purchase price to the Customer upon return of the product less a reasonable amount of depreciation for any period of use of the product.
- If we do not undertake such measures within a reasonable time after having received the notice of default by the Customer, the Customer may declare the avoidance of the contract and, subject to para. 9 claim damages.
- 7.3 We shall only be liable for any defect of title if the Customer gives prompt written notice, neither consents to any judgement or decree nor undertakes any other act in compromise without our written consent. We are not entitled to rely on a delay notice if we knew of the right or claim of a third party and the nature of it at the time of handover of the goods.
- 7.4 Any claim for quality defect or defect of title is excluded upon one year from the date of handover of the products to the Customer. This shall not apply if the defect relates to facts that we have been or ought to have been aware of at the time of handover of the goods and which we did not disclose to the Customer.

## **8. Avoidance of Contract**

- 8.1 Should the Customer claim delivery of substitute goods, repair or other performance, he shall be bound to this legal remedy for a reasonable period. Avoidance of the contract shall in this case be excluded. Moreover, the contract can only be cancelled if the Customer has threatened to cancel the contract in writing and if a reasonable period of grace set by the Customer has expired unsuccessfully. Any further legal requirements pertaining to the cancellation of contract shall remain unaffected.

8.2 We shall be entitled to avoid the contract

- if the Customer objects to the validity of these International Terms of Business,
- if the written order confirmation is received by the Customer later than 14 calendar days from issuance,
- if an insolvency application has been filed against the Customer,
- if the Customer fails to fulfil essential obligations owed to us or any third party without a justifiable reason,
- if the Customer has given incorrect particulars regarding his credit standing,
- if we do not receive proper deliveries ourselves or if there they are delayed without it being our fault or
- if for other reasons we cannot ensure performance of our obligations under reasonable conditions and the non-fulfilment, in particular with regard to the agreed consideration, is not unreasonable for the Customer.

## 9. Damages

- 9.1 Our contractual und extra-contractual liability for damages shall be subject to the subsequent provisions.
- 9.2 The Customer shall be obligated to assert other legal remedies first. He shall only be able to claim compensation for remaining disadvantages, however, not instead of other legal remedies. We shall not be liable for the performance of suppliers or subcontractors or for damage caused by the Customer. Furthermore, we shall not be liable for disturbances caused by force majeure or other circumstances which we cannot reasonably control. Moreover, we shall only be liable insofar as our executive bodies or our members of staff intentionally or gross negligently breach a contractual obligation owed to the Customer.
- 9.3 If we are liable for damages we will indemnify the Customer subject to the limits stated below. We will only compensate for damages which have been proven by the Customer, which could not be prevented by the Customer and which had been foreseeable as a consequence of the infringement of the contract as regards the occurrence of the damage and its extent. Prior to the conclusion of the contract the Customer shall be obligated to inform us in writing of any particular risks, atypical contingencies and any excessive damage. The Customer shall also be obligated to minimize damages in the event of a recognizable infringement of a contractual obligation.
- 9.4 We shall not be liable for loss of profit or non-pecuniary damage. The Customer has to prove that the loss was unavoidable for him. We shall not be liable for damages not foreseeable for us at the time of the formation of the contract in respect of its occurrence and its extent. Claims for compensation shall be limited to 200 % of the respective delivery value.
- 9.5 The limitation of liability shall not apply if the damage has been caused by intentional or gross negligent conduct of our executive bodies or directors. Irrespective of the applicable law as agreed upon below, the aforementioned provisions shall not apply if we are under a statutory liability.
- 9.6 The aforementioned limitations of liability shall also apply to the personal liability of our members of staff, employees, workers, agents or vicarious agents.

## 10. Limitation

- 10.1 All claims for defects as to quality or title shall be time-barred 12 (twelve) months after handover of the respective product.
- 10.2 Insofar as the limitation period may not already have barred the claim, claims for damages brought by the Customer are excluded after one year starting with the rejection of the claim by us, at the latest after having accrued.

## **11. Retention of Title**

- 11.1 Irrespective of the delivery and the passing of risk or other provisions of these International Terms of Business the title to the goods shall not pass to the Customer as long as the purchase price has not been paid in full.
- 11.2 Upon any rescission of the contract we shall have the right to reclaim the goods, sell them elsewhere or dispose of them at our discretion.

## **12. Release from Liability, Industrial Property Rights, Form**

- 12.1 Without waiving further claims the Customer shall grant us unconditional release from liability in respect of all claims of third parties raised against us due to product liability, other liability or similar provisions, if the liability is based on circumstances – such as the presentation of a product – created by the Customer or any other third party without our express written approval. In particular this release shall also include compensation for expenditure incurred by us. The Customer may not invoke further requirements or raise objections, in particular he may not refer to any non-observance of monitoring and recall obligations or plead the statute of limitations.
- 12.2 We shall reserve all property rights, copyrights and other industrial property rights as well as intellectual property rights relating to any illustrations, drawings or other documents made available to the Customer as hardcopy or in electronic form.
- 12.3 All messages, explanations, statements etc. are to be written exclusively in either the German or English language. Messages sent by facsimile or e-mail shall fulfil the written form requirement.

## **13. General Provisions**

- 13.1 The place of performance, payment and fulfilment shall be Bielefeld/Germany. This shall also apply if we assume the costs for payment transactions, render services for the Customer at a different place or if rendered services are to be rescinded. Should Incoterms of group F or C or the responsibility for costs have been agreed upon in individual cases, this shall not lead to an amendment of this contract.
- 13.2 The English version of the CISG (United Nations Convention on Contracts for the International Sale of Goods of 11<sup>th</sup> April 1980) as well as the standard customs in Bielefeld/Germany shall apply to the legal relationship with the Customer. The CISG shall apply beyond the scope of its application and regardless of any reservations of the contracting state for all contracts which are governed by these International Terms of Business pursuant to para. 12.1 above.
- 13.3 The CISG in connection with these International Terms of Business shall exclusively govern the conclusion of contracts including agreements on the place of jurisdiction and the validity of these International Terms of Business as well as for contractual rights and obligations of the contracting parties, pre-contractual and other secondary obligations and for interpretation purposes. Beyond the scope of the CISG the legal relationship of the parties shall be determined according to non-unified German law.
- 13.4 Any disputes arising from and in connection with contracts governed by these International Conditions of Purchase are to be settled by an arbitration tribunal on the basis of the arbitration rules of German Institution of Arbitration (DIS). The place of arbitration will be Frankfurt am Main/Germany. The arbitration tribunal will consist of a single arbitrator if the amount in controversy is less than € 150 000 and three arbitrators if the amount in controversy is higher. Arbitration proceedings will be conducted in English.
- 13.5 Should any of the provisions of these International Terms of Business be or become invalid in full or in part, the remaining provisions shall continue to be valid. Both parties shall be obligated to replace the invalid provision with a stipulation which comes closest to the economic meaning and purpose of the invalid provision.

## **14. Data Privacy**

- 14.1 The data protection declaration on our homepage <https://mycon.info/en/data-privacy/> applies. The competent supervisory authority is the State Commissioner for Data Protection of North Rhine-Westphalia:  
Kavalleriestraße 2-4  
40213 Dusseldorf  
Germany  
Phone: +49 (0)211-384240  
E-mail: [poststelle@ldi.nrw.de](mailto:poststelle@ldi.nrw.de)